



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

March 15, 1955

Hon. Jim Yancy, Chairman
Judiciary Committee
House of Representatives
54th Legislature
Austin, Texas

Opinion No. MS-187

Re: Constitutionality of House
Bill 573 of the 54th Legislature

Dear Mr. Yancy:

You have requested the opinion of this office as to the constitutionality of House Bill 573 by Morgan. The caption of this bill indicates that it is designed to put a maximum or ceiling on all charges which may be assessed by lenders in connection with loans, and providing for certain exceptions not here pertinent. The Bill specifically states that it shall not be an authorization for any charge or charges not now lawful.

Section 11 of Article XVI of the Texas Constitution is as follows:

"All contracts for a greater rate of interest than ten per centum per annum, shall be deemed usurious, and the first Legislature after this amendment is adopted, shall provide appropriate pains and penalties to prevent the same"

The word "interest" is defined as compensation allowed by law or fixed by parties for use or forbearance or detention of money. Kishi v. Humble Oil & Refining Co., 10 F. 2d 356. See also Article 5069, Vernon's Civil Statutes of Texas, for like definitions.

The Texas Constitution, in the section quoted above, condemns usurious contracts which are contracts calling for interest in excess of ten percent. Therefore, we come immediately to the controlling question regarding the thirty-six percent per annum gross rate of charge permitted by this bill should same become law. If the bill by this method attempts to increase the rate of interest from ten to thirty-six percent it is, per se, unconstitutional.

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The various sections of the bill, however, are replete with definitions and terms which lead to the obvious conclusion that certain charges for services actually rendered, in addition to allowed interest, are contemplated. Moreover, certain statutory charges for actual and necessary expenses in connection with the making of loans, are authorized, and same are not to be considered as interest. Our particular reference, here, is to Article 4646b, Vernon's Civil Statutes, the provisions of which were upheld as constitutional in Watts v. Mann, 187 S.W.2d 917 (Tex. Civ. App. 1944, error ref.); and Wooldridge v. State, 183 S.W.2d 746 (Tex. Civ. App. 1944, error ref., w.o.m.).

The Legislature has also allowed additional charges by Article 1524a-1, Vernon's Civil Statutes (the certificate device) and Article 3.53 Texas Insurance Code (the credit insurance device). While we are not here passing upon the ultimate constitutionality of these two charges we find no provision in the Constitution which would prohibit the Legislature from making contracts unlawful when the aggregate of all charges including interest exceeds thirty-six percent per annum. So long as the actual interest charge does not exceed ten percent per annum the provisions of Section 11, Article XVI are not violated.

Nor is any constitutional provision tread upon when the Legislature invokes a penalty for usury. This bill makes a usurious contract unenforceable by the lender, and gives the borrower the right to recover all amounts paid for principal, plus double the amount of all charges to be paid, plus a cancellation of any amounts unpaid, as well as attorney's fees and court costs. There is no constitutional objection to the fine and penalty authorized on a conviction for the criminal offense of usury. The Legislature has a constitutional mandate to provide "appropriate pains and penalties to prevent" usurious contracts.

Yours very truly,

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Attorney General

By
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JFJ:bl:elb